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REMARKS

Claims 1-15, and 17-19 remain in the application. Claim 8 has been amended for clarity.

§112 Rejection

Claims 11-13 and 19 were rejected under §112 for indefiniteness. The action objects to the claim language that indicates variously under different circumstance that the controller operates to provide different illumination functions in response to different application or withdrawal of force. Applicant contends that the claims are clear and requests that if the rejection is to be sustained, that it indicate for each claim exactly what it considers indefinite. In the context of applicant's disclosure, the various claimed functions are clear and unambiguous. The action states "applicant should provide further elucidation within the context of the claim of how application of a force is upon the switch". Although it is not claimed, force is normally applied to the switch by the pressure of a finger or thumb.

§102 Rejections

Claims 1-3 were rejected under §102 as anticipated by Ko. Ko discloses a flashlight with an elongated housing having an electronic controller forward of the batteries, at the lamp end. The rejection is in error because it misstates what Ko discloses. The rejection states that Ko has at least two independent electrical paths between the first and second ends of the flashlight. In fact, Ko has only the conventional single electrical path between the ends: a conductive housing. The action illustrates multiple paths between switches 12, 13, 14, and the controller 3, and between the battery 11 and lamp 21, based on Figure 4.

However, Figure 3 of Ko shows that only one of these electrical paths extends between the ends of the flashlight. Switches 12 and 13, and the controller 3 are all forward of the batteries, so the connections between them are short, and do not extend between the ends of the flashlight. Similarly, the connection between the forward (non-ground) end of the battery 11 and the lamp is confined to the forward end of the flashlight, and does not extend between the ends. Of all the elements shown in Figure 4 as connected to the controller 3, only trigger 14 is at the rear of the flashlight, and only one electrical path extends to this element. If it were asserted that there was more than one electrical path in Figure 4, neither Figure 3 nor the text provides any support for

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such an interpretation, as the housing is the only illustrated or discussed means for providing an electrical path.

In the latest action, it is argued that "it is clear and apparent that the three electrical paths defined in the previous Office Action are inherently disposed between the first and second ends of the housing, and are independent due to the very nature that the paths are not connected to one another." This is simply not true. First, the previous action indicated four separate electrical paths, not three. And as applicant has noted above and in the prior response, three of those four paths connect elements that are all at the forward end of the flashlight, and thus do not extend from one end to the other. Second, the fact that paths are not connected to one another does not provide evidence of where those paths extend. The action's comments regarding switches being dependent upon one another is not pertinent to the patentability of claim 1.

The second error in the rejection of claim 1 is in the assertion that the rear end switch 14 provides an input to the controller, to which the controller is responsive to deliver power to the lamp. In fact, the Ko switch 14, is an input that merely invokes a flashing signal mode in an already illuminated lamp, and does not generate a response of power delivery. Applicant disagrees with the latest contention that regulation of intensity, as done by Ko switch 14, discloses the control of delivery of power. One determines how power is delivered, the other determines whether power is delivered.

Accordingly, claim 1 and its dependents should be allowable over the cited reference.

Claim 2 should be allowable for the additional reason that action does not specify which switch is being asserted. The latest Office action continues to omit any basis for the rejection, by failing to specify which switch is being asserted.

Claim 8 was rejected under §102 as anticipated by McDermott. McDermott discloses a flashlight with a variable resistance switch or rheostat 48 that provides variable brightness of output. A rotary mechanism operates the rheostat, so that the rotational position of the mechanism determines the electrical condition of the rheostat. McDermott contains no electronic controller.

The rejection of claim 8 is in error because the action cites the rheostat 48 (as shown in Figures 14-16) as "an electronic controller". A rheostat is not a controller.

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Then, the action asserts incorrectly that the cited reference contains a switch connected to the controller. The action cites as a switch, elements 3, 53, 59 and 60 of Figure 18. Figure 18 does not appear to include element 3, and the other elements are lever 53, cam 59, and follower 60. These are mechanical elements, and there is no indication that they have the electrical function of a switch, let alone that they are connected to a controller. Moreover, claim 8 has been amended to clarify that the connection between the switch and the controller is an electrical connection. Thus, a mechanical device that a mechanically engages rheostat does not disclose this limitation.

Even without this clarifying amendment, the mechanism cited as a switch is not operable to transmit an electrical state. Its position provides a mechanical state, not an electrical state. Furthermore, there is nothing electrical being transmitted between the cited mechanism, and the rheostat cited as a controller.

In addition, the mechanism cited as a switch fails to disclose the feature of having a plurality of different electrical states. Mechanisms do not have electrical states.

The rejection is further in error because the mechanism cited as a switch does not operate based on a degree of externally applied force. The figures cited by the action in support of this incorrect assertion do not provide any evidence that the cited mechanism has a position based on a degree of force.

Accordingly, claim 8 and its dependents should be allowable over the cited reference.

Claim 11 was rejected under §102 as unpatentable over McDermott. The rejection is traversed for the reason noted above with respect to claim 1, in that the cited rheostat is not a controller.

The rejection of claim 11 is in error for the additional reason that the cited reference does not disclose operability for momentary versus sustained illumination, based on a degree of force. The action does not provide evidence that McDermott's momentary illumination function is invoked with a first degree of force, nor that the sustained illumination function is invoked with a greater force.

Accordingly, claim 11 and its dependents should be allowable over the cited reference.

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Claims 12 and 13 should be allowable for the additional reason that the action provides no support for the rejection, failing to cite any particular aspect of the cited reference that is alleged to disclose the claimed elements and features. This failure of support was pointed out in applicants prior response, and has not been addressed.

Claim 14 was rejected under §102 as anticipated by Nilssen. The rejection is in error because it fails to point out where the cited reference discloses each of the claimed features.

The error is in the action's assertion that the Nilssen controller is operable to provide dimmed lamp illumination in response to an application of force. Nilssen's switch, as discussed above, has a normal-brightness on position, and a range of over-brightness positions, with no dimmed position. In addition, even if the normal position were construed as a dimmed position, the normal position of Nilssen is detented, with no force being needed to provide illumination at that level. An application of force to the Nilssen switch generates illumination at a greater than minimum level.

Accordingly, claim 14 and its dependents should be allowable.

§103 Rejections

Claims 4-7 were rejected under 35 USC §103(a) as unpatentable over Ko in view of Nilssen. The rejections are traversed because the proposed combination would be non-functional, because there is inadequate motivation to make the proposed combination, because the combination is made in hindsight based on applicant's disclosure, and because the references teach away from the combination.

The first error in the rejection is in that the combination would not function. The Ko switch being cited at the tail end of the flashlight body serves to cycle a flashing feature. Substitution of the resistive slider switch of Nilssen at this location would defeat the flashing feature (teaching away from the combination), and fail to achieve any benefits of variable brightness. Moreover, even if it were acceptable to lose the flashing feature, location of the Nilssen switch at the tail end would require the further addition of multiple electrical connections from one end of the flashlight to the other, a feature not found in the art of record, and having manufacturing and operational disadvantages.

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The second error in the rejection is that there is inadequate motivation to make the modification. Ko already has intensity regulation, and there is no evidence that this is lacking in any way. The notion that a tactile switch provides advantages is speculation, presumably based on hindsight, not any true objective articulated by the references. It is just as possible that if the articulated motivation of "greater control of the illumination brightness" were applicable, then the Ko brightness-setting system is more controlled than a spring-biased slider switch. Substitution of a tactile switch that returns to a base intensity level may be undesirable for those who wish to set a brightness level and operate at that level without needing to maintain a constant pressure to a switch. Accordingly, the references teach away from the proposed modification.

Claim 17 has been amended to clarify the feature of establishing a dimmed level separately from operating a switch to reach that dimmed level.

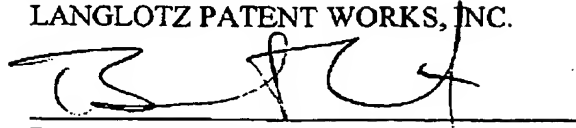
The rejection of claim 18 is traversed because the articulated motivation is inadequate, and because the primary cited reference teaches away from the proposed modification. The action asserts the motivation "a user may prefer to use the flashlight with a rearward grip". However, there is no indication in McDermott or in the art of record that McDermott lacks functionality by its switch position, or that there is a reason to relocate the switch. Moreover, to relocate the McDermott switch as proposed would also require relocating the McDermott rheostat, which is an electrical component connected to other elements at the forward end of the flashlight. This would mean extending separate wires to the rear end of the flashlight, and engineering challenge that presents significant disadvantages. Accordingly, the rejection appears to be based in hindsight, and not based on any true motivation drawn from the art of record.

All pending claims should be allowable for the above reasons. Reconsideration of the application is respectfully requested.

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Respectfully submitted,
LANGLOTZ PATENT WORKS, INC.



Bennet K. Langlotz
Attorney for Applicant
Registration No. 35,928

LANGLOTZ PATENT WORKS, INC.
PO Box 759
Genoa, NV 89411
Telephone 877 230 5950
Facsimile 877 230 5950
Email patent@langlotz.com